

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

and

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 2134 of 2005

Between:

M/s. Vijaya Borewells, a proprietary concern

Through its Proprietor Sri K. Vykunta Rao,

S/o. Sri Vasudeva Rao, aged 42 years,
having business at 8-30-38, Thotapalem, Vijayanagaram

..... PETITIONER

AND

- 1 The Asst. Commercial Tax Officer, Integrated Check Post,
Bhimunivaripalem, Vijayanagaram District.
- 2 The Commercial Tax Officer, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue order, direction or writ more particularly one in the nature of writ of mandamus declaring the action of the first respondent in imposing entry tax on diesel driven air compressors under notice dt. 13-1-2005 as illegal, unwarranted and arbitrary as diesel driven air compressors are not covered by G.O.Ms.No.552, dt. 12-3-2002 and contrary to the clarification issued by the Commissioner of Commercial Tax vide CCT No. AT(3)/2669/2002, dt. 5-11-2002 and impugned notice dt. 13-1-2005 may be set aside and consequentially to release the air compressor in favour of the petitioner.

Counsel for the Petitioner: MR.K.K.WAGHRAY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following ORDER:

ORDER: (Per Sri M.H.S.Ansari,J)

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Heard learned counsel for respective parties.

The grievance of the petitioner is with respect to the detention of the goods viz., Air Compressor. By notice dated 13.01.2005, the petitioner was informed that the said goods are liable to entry tax at the rate of 8% and a sum of Rs.1,80,000/- towards tax was proposed. The petitioner was asked to file his explanation within 15.01.2005.

No explanation appears to have been filed by the petitioner before the first respondent pursuant to the impugned notice.

It is contended before us by Sri K.K.Waghray, learned counsel for the petitioner that earlier for similar 'Air Compressors for mounting on the Rigs', it was held that they are not liable to tax under A.P. Tax on Entry of goods into local Areas Act, 2001. Reliance is being placed by the petitioner upon the clarificatory letter dated 05.11.2002 issued by the Commissioner for Commercial Taxes.

As no reply has been furnished to the impugned notice dated 13.01.2005 by the petitioner, we are not inclined to go into the merits and the contentions raised before us. Also, for the reason that no orders have been passed by the first respondent till date, the validity of which could be considered in writ jurisdiction.

Accordingly, the instant writ petition is disposed of with directions as under:

If the petitioner submits his reply to the impugned notice dated 13.01.2005 along with all such relevant documents and material, upon which, the petitioner relies, first respondent shall consider the said representation and dispose of the same in accordance with law within a period of one week from the date of receipt of a copy of such representation.

With directions, as above, the writ petition is disposed of. No costs.

M.H.S. ANSARI, J

T.CH.SURYA RAO, J

Date: 09.02.2005

Note: Furnish CC on priority basis

B/o

va

To

1 The Asst. Commercial Tax Officer, Integrated Check Post,
Bhimunivaripalem, Vijayanagaram District.

2 The Commercial Tax Officer, Nellore District.

3 Two CCs to G.P for Commercial Tax, High Court of A.P. Buildings, Hyderabad
(OUT)

4 Two CD Copies